

California Regional Water Quality Control Board
Santa Ana Region

January 19, 2001

ITEM: 20

SUBJECT: Administrative Civil Liability Complaint No. 00-96, Sierra Aluminum Company, Riverside, Riverside County

BACKGROUND

On December 15, 2000, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. 00-96 (copy attached) to Sierra Aluminum Company (Sierra) for alleged violations of State's General Permit for Storm Water Runoff Associated with Industrial Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$30,000 for the alleged violations.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Sierra.

ACL No. 00-96 was issued by the Executive Officer to Sierra for failing to develop and implement an effective Storm Water Pollution Prevention Plan (SWPPP) and Monitoring and Reporting Requirements, for discharging unauthorized non-storm water and for discharging storm water containing pollutants to the storm drain system.

DISCUSSION

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$250), with the State Water Resources Control Board. Sierra filed an NOI and obtained coverage under the General Permit on March 31, 1992, WDID No. 8 33S002351. The facility is located at 2345 Fleetwood Drive in the City of Riverside.

On September 28, 2000, Board staff inspected the Sierra facility and observed aluminum debris and sediments around the property, an unauthorized non-storm water discharge, and no BMPs implemented. The source of the non-storm water discharge was the rinsing and cooling of hot aluminum bars from the site's foundry. Rinse water was observed entering the facility's storm drain system. The on-site storm drain inlet discharges into a drainage channel that empties into the Santa Ana River approximately 1,000 feet down-gradient from the facility. A water sample was obtained from the facility's storm drain outlet into the drainage channel. Analytical results indicated elevated iron and zinc

concentrations. Further, Board staff observed that the channel banks were littered with aluminum pieces and dust. Board staff also observed white powder that had been discharged from the Sierra facility to the drainage channel through rectangular holes in Sierra's cement wall located adjacent to the channel. The presence of these wastes in the channel indicated that discharges of storm water containing pollutants had occurred at the facility in the past. The site Health and Safety Coordinator was informed that the unauthorized non- storm water release and other pollutant discharges were a violation of their General Permit and that the banks of the channel had been impacted by aluminum pieces and debris.

On September 29, 2000, Board staff inspected the drainage channel located adjacent to the Sierra facility and obtained samples of the aluminum pieces and of soil from the channel's banks. Staff observed that liquid from the Sierra storm drain outlet was still flowing into the channel.

On October 2, 2000, Board staff along with Department of Fish and Game staff inspected the drainage channel adjacent to the Sierra facility and obtained samples of runoff from the site and sediment for analysis. Analytical results revealed elevated levels of total dissolved solids, arsenic, barium, cadmium, chromium, cobalt, copper, lead, mercury, molybdenum, nickel, vanadium and zinc. Staff again observed that liquid from the Sierra storm drain outlet pipe was still flowing into the channel.

Section 13385 (a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385 (c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.

On October 23, 2000, Sierra was issued a Notice of Violation. By failing to develop and implement an appropriate SWPPP and discharging unauthorized non-storm water containing pollutants into waters of the United States, the discharger violated Provisions A.1 and B.3 of the General Permit. Pursuant to Water Code Section 13385 (a) (2), civil liability may be imposed for the preceding violations. The maximum potential liability for these violations is \$30,000.

The Executive Officer issued ACL No. 00-96 because of these repeated violations of the General Permit. The Water Code specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the Violations

The discharger was fully aware of the requirements of the General Permit to develop and implement a SWPPP to control the discharge of pollutants in storm water runoff. They were also aware of the prohibition on discharge of unauthorized non-storm and storm water containing pollutants from the subject site.

2. Ability to Pay the Proposed Assessment

The discharger has not provided any information to indicate that it would have difficulty paying the proposed assessment.

3. Prior History of Violations

Sierra's Riverside facility had not been inspected by the Board prior to the September 28, 2000, inspection. Sierra has another facility located in the city of Fontana in San Bernardino County that is also subject to the General Permit. Sierra's Fontana facility was issued two Notices of Violation for various violations of the General Permit. Some violations observed were similar to those at the Riverside facility such as leaking chemicals, white materials, salts, and residues on the ground, unauthorized non-storm water discharges, and aluminum chips and dust all around the facility and in a discharge channel leading to a curbside gutter.

Sierra's Fontana facility has also been cited on several occasions by another regulatory agency for violating their permitted discharge limit for peak flow, and was charged for the cost of cleaning out the build up of white chalky solid material in a sewer line.

4. Degree of Culpability

The storm water regulations are applicable to all industrial activities. All dischargers, including Sierra, are responsible for compliance with the Clean Water Act. Sierra is fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act.

5. Economic Benefit or Savings, if any, Resulting from the Violations

By failing to effectively develop and implement BMPs, Sierra gained a significant economic advantage over their competitors. It also appears that employees were not properly trained to handle wastes, spills, and leaks. Sierra did not eliminate unauthorized non-storm water discharges. Economic savings from these violations are estimated as follows:

Cost to develop and implement proper SWPPP on a year- round basis	=	\$4,500
Cost to train employees	=	\$1,000
Cost to eliminate non-storm water runoff (treat and discharge to sanitary sewer or haul it away to a proper disposal site)	=	\$20,000
Total cost savings	=	<hr/> \$25,500

In addition, Regional Board staff costs to investigate this incident were \$1400.

STATEWIDE ENFORCEMENT POLICY

On April 18, 1996, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are consistent, predictable, and fair. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

RECOMMENDATION

After consideration of the above factors, staff recommends that the Board affirm the assessment of \$30,000 specified in the Administrative Civil Liability Complaint issued by the Executive Officer on December 15, 2000.



California Regional Water Quality Control Board

Santa Ana Region



Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: [http:// www.swrcb.ca.gov/rwqcb8](http://www.swrcb.ca.gov/rwqcb8)
3737 Main Street, Suite 500,
Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288

Gray Davis
Governor

December 15, 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Naro Kuch
Sierra Aluminum Company
2345 Fleetwood Drive
Riverside, CA 92509-2426

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. 00-96

Dear Mr. Kuch:

We are enclosing a certified copy of Complaint No. 00-96 proposing administrative civil liability of \$ 30,000 for violations of the State's General Permit for Storm Water Discharges Associated with Industrial Activity, NPDES Permit No. CAS000001, WDID No. 833S002351. If necessary, a public hearing on this matter will be scheduled for the Regional Board Meeting on January 19, 2001. The staff report regarding this complaint and the meeting agenda will be mailed to you not less than 10 days prior to the Board meeting.

You have the option to waive your right to a hearing. Should you waive your right to a hearing and pay the proposed assessment, the Regional Board will not hold a public hearing on this matter. If you choose to waive your right to a hearing, please sign the enclosed waiver form and submit the form with a check or money order for \$30,000. The check or money order should be made payable to the State Water Resources Control Board and should be mailed to this office.

If you do not want to waive your right to a hearing, a pre-hearing meeting with the Board staff is recommended. Should you wish to schedule a meeting, please call us prior to December 22, 2000. At that time, you may submit information that may not have been previously available to staff regarding this incident. The information should address the following:

1. Nature, circumstances, extent, and gravity of the violation;
2. Your ability to pay the proposed assessment;
3. Your degree of culpability;
4. Any prior history of violations;
5. Economic benefit or savings; and,
6. Such other matters as justice may require.

California Environmental Protection Agency



Recycled Paper

If you have any questions regarding this complaint, you may contact Ms. Ann Iaali at (909) 320-2182 or Ms. Milasol Gaslan at (909) 782-4419. All legal questions should be referred to our legal counsel, Mr. Ted Cobb, at (916) 341-5171.

Sincerely,

Gerard J. Thibeault
Executive Officer

Enclosures: Complaint No. 00-96 and Waiver Form

cc: Bruce Fujimoto, State Water Resources Control Board, Division of Water Quality
Ted Cobb, State Water Resources Control Board, Office of the Chief Counsel
Tom Huetteman, US-EPA, Region 9 (WTR-7)
Mark Wills, Riverside County Flood Control and Water Conservation District
Ben Urquiza, City of Riverside

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Complaint No. 00-96
)	for
Sierra Aluminum Company)	Administrative Civil Liability
2345 Fleetwood Drive)	
Riverside, CA 92509)	
)	
<u>Attn: Mr. Naro Kuch</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Sierra Aluminum Company (Sierra) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13385(c) of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within sixty days of the date of issuance of this Complaint. The hearing in this matter will be scheduled for the Board's regular meeting on January 19, 2001 at the City Council Chambers, 25541 Barton Road, City of Loma Linda. Sierra or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. The Sierra Aluminum facility located at 2345 Fleetwood Drive in Riverside is regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 97-03-DWQ, NPDES No. CAS000001(General Permit), WDID No. 8 33S002351.
5. Sierra is alleged to have violated Provisions A.1 and B.3 of the General Permit. Sierra failed to properly develop and implement an effective Storm Water Pollution Prevention Plan (SWPPP) and Monitoring and Reporting Requirements and discharged pollutants to waters of the United States from the facility. Pursuant to Water Code Section 13385, civil liability may be imposed for the preceding violations.

6. This complaint is based on the following facts:
 - a) On September 28, 2000, Board staff inspected the Sierra facility and observed aluminum debris and sediments around the property, an unauthorized, non-storm water discharge, and no best management practices implemented. The source of the non-storm water discharge was the rinsing and cooling of hot aluminum bars from the site's foundry. Rinse water was observed entering the facility's storm drain system. The on-site storm drain inlet directly discharges into a drainage channel that empties into the Santa Ana River approximately 1,000 feet down-gradient from the facility. A water sample was obtained from the facility storm drain outlet into the drainage channel. Analytical results revealed high levels of iron and zinc in the discharges from the site. Further, Board staff observed that the channel banks were littered with aluminum pieces and dust. Board staff also observed white powder that had been discharged from the Sierra facility to the drainage channel through rectangular holes in Sierra's cement wall located adjacent to the channel. The site Health and Safety Coordinator was informed that the unauthorized, non-storm water release and other pollutant discharges were a violation of their permit and that the banks of the channel had been impacted by aluminum pieces and debris.
 - b) On September 29, 2000, Board staff inspected the drainage channel located adjacent to the Sierra facility and obtained samples of the aluminum pieces and of soil from the channel's banks. Staff observed that liquid from the Sierra storm drain outlet was still flowing into the channel.
 - c) On October 2, 2000, Board staff along with Department of Fish and Game staff inspected the drainage channel adjacent to the Sierra facility and obtained samples of runoff from the site and sediment for analysis. Analytical results of the sediment sample revealed elevated levels of total dissolved solids, arsenic, barium, cadmium, chromium, cobalt, copper, lead, molybdenum, nickel, vanadium, zinc, and mercury. Staff again observed that liquid from the Sierra storm drain outlet pipe was still flowing into the channel. Staff noticed that this drainage channel runs under Fleetwood Drive and through an underground pipe which ends at the Santa Ana River.
7. Sierra is alleged to have violated Provisions A.1 and B.3. of the General Permit. Sierra violated Provision B.3 by failing to properly implement an effective SWPPP. Sierra also violated Provision A.1 by discharging non-storm water, containing pollutants, into waters of the United States from the industrial site.
8. Section 13385 (a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385 (c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.

9. Pursuant to Section 13385(c), Sierra is civilly liable in the amount of \$30,000 (\$10,000 for three days of violation) for the violation cited in Paragraph 6, above. The total maximum assessment is \$30,000.
10. Regional Board staff spent a total of 20 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$1400). Sierra realized at least \$25,000 in cost savings by improperly disposing of process wash water. These factors were considered in assessing the penalty indicated in Paragraph 11, below.
11. Section 13385 (e) specifies factors that the Board shall consider in establishing the amount of civil liability. After consideration of those factors, the Executive Officer proposes civil liability be imposed on Sierra by the Board in the amount of \$30,000 for the violations cited above.

WAIVER OF HEARING

Sierra may waive its right to a hearing. If Sierra chooses to do so, please sign the attached waiver and return it, together with a check or money order, payable to the State Water Resources Control Board, for the amount of civil liability proposed in Paragraph 10, above, to:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

If you have any questions, please contact Ms. Milasol Gaslan at (909) 782-4419 or Mr. Michael Adackapara at (909) 782-3238. All legal questions should be referred to the Regional Board's staff counsel, Mr. Ted Cobb, at (916) 341-5171.

Date

Gerard J. Thibeault
Executive Officer

In the matter of:)	Complaint No. 00-96
)	for
Sierra Aluminum Company)	Administrative Civil Liability
2345 Fleetwood Drive)	
<u>Riverside, CA 92509</u>)	

WAIVER OF HEARING

I agree to waive Sierra Aluminum Company's right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. 00-96. Enclosed is a check, made payable to the State Water Resources Control Board, in the amount of \$30,000. I understand that Sierra Aluminum Company is giving up its right to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

Date

for Sierra Aluminum Company